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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,121	02/18/2004	Floyd Backes	160-031	1979
34845 7590 02/21/2007 McGUINNESS & MANARAS LLP 125 NAGOG PARK ACTON, MA 01720			EXAMINER PHAM, BRENDA H	
			ART UNIT	PAPER NUMBER
			2616	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/21/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/781,121

Applicant(s)

BACKES ET AL.

Examiner

Brenda Pham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 6-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 11 is/are rejected.
- 7) ☐ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-11 are currently pending in this application. Claims 6-10 are withdrawn from consideration.
2. Applicant's arguments with respect to claims 1-5, 11 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Yuen (US 6,215,811 B1).

Regarding claims 1-3, Yuen discloses a program product for use by a wireless device in a wireless communications environment, the program product comprising a computer readable medium having embodied therein a computer program for storing data, the computer program comprising:

Logic for associating the wireless device with a current access point on a first channel; logic for ascertaining, by the wireless device, whether the wireless device should attempt to associate with an alternative access point operating on a second

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channel, the ascertaining logic utilizing, at least in-part, signal strength of transmission from the alternative access point, and technology type employed by the alternative access point and logic for requesting association with the alternative access point if it is ascertained that the wireless device should attempt to associate with said alternative access point. Yuen further teach logic for automatically collecting, by the wireless device, information about access points operating on other channels, including indications of transmit power backoff, wherein the logic for ascertaining obtains an indication of expected data rate of service by the alternative access point, and ascertains that the wireless device should attempt to associated with the alternative access point operating on said second channel if the alternative access point on said second channel has a greater expected data rate than an actual data rate provided by the current access point (see abstract, figure 22, 23).

(Yuen teaches a system and method for handling off a remote unit from a first base station to a second base station, in a cellular spread-spectrum communications network, without loss of data. The remote unit transmits data to the first base station at a first data rate, and receives a first spread-spectrum signal having a first signal quality form the first base station. The remote unit monitors the first signal quality and compares the first signal quality to a plurality of signal qualities of a respective plurality of received-spread-spectrum signals. The remote unit initiates handoff when any of a number of predetermined criteria are met. Upon initiating handoff to the second base station, the remote unit stores the data that would otherwise have been transmitted. Once handoff is

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complete, the remote unit transmits the stored data to the second base station at a second data rate, with the second data rate greater than the first data rate (see abstract).)

Allowable Subject Matter

5. Claims 4-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Pham whose telephone number is (571) 272-3135. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn D. Feild, can be reached on (571) 272-2092.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.

February 12, 2007

Brenda Pham



**BRENDA PHAM
PRIMARY EXAMINER**